IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

Bail Appl..No. 4076 of 2007()

CRIME NO.194 OF 2007 OF VALAPPAD POLICE STATION

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: PETITIONERS

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1. ANILKUMAR,S/O.SUNDARAN,
   THALIKULANGARA HOUSE,
   P.O.,NATTIKA, CHAVAKKAD TALUK.

2. UBAID,S/O.SAITHUM NADUMPURAKKAL HOUSE,P.
   O.,CHAZHOOR,THRISSUR TALUK.

3. SAJITH.S/O.CHANDRAKELADHARAN,
   CHIRAKKELL HOUSE,P.O.,
   CHAZHOOR, THRISSUR TALUK.

BY ADV. SRI.P.RAMACHANDRAN

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED BY THE
   PUBLIC PROSECUTOR,HIGH COURT OF KERALA,
   ERNAKUL;AM.

2. THE SUB INSPECTOR OF POLICE,
   VALAPPAD POLICE STATION, VALAPPAD,
   THRISSUR DISTRICT.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 06/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.4076 of 2007

Dated this the 6th day of July, 2007

ORDER

Application for anticipatory bail. Petitioners are accused 1 to 3. Accused No.1 is the son of the defacto complainant. Accused 2 and 3 are friends of the 1st accused. The father/defacto complainant employed abroad rushed back to India on coming to know that a property of his adjacent to the residential house had been sold to a stranger by the 1st petitioner. According to him, the original documents were kept in the house and were never handed over to the 1st petitioner. The 1st petitioner had allegedly committed theft of the original documents. He had allegedly created a false/forged power of attorney. On the strength of such forged/false power of attorney and the original documents thieved by him, he allegedly executed a sale deed in favour of a stranger. In such document, petitioners 2 and 3 are the attesting witnesses. Crime has been registered. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners first of all submits that in so far as accused 2 and 3 are concerned, there is absolutely no worthwhile allegations, which can suggest their involvement either in the alleged theft or in the forgery committed. At worst reason the only allegation is that petitioners 2 and 3 are attesting witnesses to

the sale deed executed by the 1st petitioner. At any rate, they may be granted anticipatory bail subject to appropriate conditions, submits the learned counsel for the petitioners.

3. The counsel further submits that the allegation against the 1st petitioner - of forgery and theft, are also most unjustified and unfair. The father, who is employed abroad is prevailed upon by other sons who are inimical towards the petitioner to make such a false allegations, contends the learned counsel for the petitioner. The power of attorney, a copy of which available in the case diary is seen attested by an officer of the embassy, it is pointed out. In these circumstances, the counsel contends that the 1st petitioner may also be granted anticipatory bail.

4. The learned Public Prosecutor on instructions does not oppose the application for anticipatory bail of petitioners 2 and 3. As against the 1st petitioner, he stoutly opposes the application. The learned Public Prosecutor submits that there is absolutely no reason to assume or infer that the father is making such a false allegation of theft against the 1st petitioner. The genuineness of the power of attorney may have to be verified in the course of investigation. But at any rate, the allegation that the original documents were thieved, does require careful and cautious scrutiny. At the moment, with the available inputs and on broad probabilities, it would be imprudent to assume that the father is actuated by mala fides against his own son.

5. I find merit in the stand taken by the learned Public Prosecutor. At any rate, I am not persuaded to agree that this is a fit case where the extraordinary equitable discretion under Section 438 Cr.P.C can or ought to be invoked in favour of the petitioners. Notwithstanding the fact, as pointed out by the learned counsel for the petitioners, that the defacto complainant has not initiated any civil proceedings so far, I am satisfied that this is not a fit case where anticipatory bail can be granted to the 1st petitioner. This is an eminently fit case where the 1st petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

6. In the result, this bail application is, allowed in part. Claim of the 1st petitioner for anticipatory bail is rejected with the above observations. The following directions are issued in favour of petitioners 2 and 3 under Section 438 Cr.P.C.

i) Petitioners 2 and 3 shall appear before the learned Magistrate at 11 a.m on 13.07.2007. They shall be enlarged on regular bail on their executing a bond for Rs.25,000/- (Rupees Twenty Five thousand only) each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate;

ii) Petitioners 2 & 3 shall make themselves available for interrogation before the Investigating Officer between 10 a.m and 12 noon on all Mondays and Fridays for a period of one month and

thereafter they shall appear so as and when directed by the Investigating Officer in writing to do so;

iii) If petitioners 2 & 3 do not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest petitioners 2 & 3 and deal with them in accordance with law as if those directions were not issued at all;

iv) If petitioners 2 & 3 were arrested prior to their surrender on 13.07.07 as directed in clause (1) above, they shall be released on bail on their executing a bond for Rs.25,000/- (Rupees Twenty Five thousand only) without any sureties undertaking to appear before the learned Magistrate on 13.07.07.

7. Needless to say, the option of the 1st petitioner to surrender before the Investigating Officer or the learned Magistrate and seek bail thereafter shall remain unfettered by the dismissal of his claim for anticipatory bail. Such application will have to be considered on merits, in accordance with law and expeditiously by such Magistrate if such application is filed and after giving sufficient prior notice to the Prosecutor in charge of the case.

(R.BASANT, JUDGE)

rtr/-